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10/024,585	12/21/2001	Errol O. Kendall	1986.004.00	2499
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MCKENNA LONG & ALDRIDGE LLP			EXAMINER	
1900 K STREET, NW			CHANDLER, SARA M	
WASHINGTON, DC 20006				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/024,585	Applicant(s) KENDALL ET AL.	
	Examiner SARA CHANDLER	Art Unit 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This Office Action is responsive to Applicant's arguments and request for reconsideration of application 10/024,585 (12/21/01) filed on 07/08/08.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It does not identify the citizenship of each inventor.

It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either an application data sheet or supplemental oath or declaration.

Specifically, the residence and citizenship information for Sharyn R. Kohen is missing.

Claim Interpretation

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

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2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. See MPEP 2106 II C. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP 2106 II C.

Language in a method claim that states only the intended use or intended result, but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result, but does not result in a structural difference between the claimed invention and the prior art. In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as “*if, may, might, can could*”, as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as “*wherein, whereby*”, that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a

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particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) "adapted to" or "adapted for" clauses,
- (C) "wherein" clauses, or
- (D) "whereby" clauses.

See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 44 and 52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The preamble of claims 44 and 52 which are directed to a methods coupled with the process steps in the body of the claim would indicate that the claimed inventions fall within one of the four statutory categories.

Claims 44 and 52 are cover a 35 U.S.C. 101 Judicial Exception because they are directed to abstract ideas. The claimed invention is dependent on the determination of ratings factors that are subsequently weighted. As least some of the ratings, such as

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quality of customer service and financial strength, are subjective and no standard has been given for their analysis. Furthermore, no specific formula has been given with respect to the weighting of the different ratings. The invention is entirely arbitrary and subject to the discretion of its human operators.

Determining whether the claim falls within one of the four enumerated categories of patentable subject matter recited in 35 U.S.C. 101 (i.e., process, machine, manufacture, or composition of matter) does not end the analysis because claims directed to nothing more than abstract ideas (such as mathematical algorithms), natural phenomena, and laws of nature are not eligible for patent protection. *Diehr*, 450 U.S. at 185, 209 USPQ at 7; accord, e.g., *Chakrabarty*, 447 U.S. at 309, 206 USPQ at 197; *Parker v. Flook*, 437 U.S. 584, 589, 198 USPQ 193, 197 (1978); *Benson*, 409 U.S. at 67-68, 175 USPQ at 675; *Funk*, 333 U.S. at 130, 76 USPQ at 281.

Claims 44 and 52 are not directed to a practical application of a judicial exception. Claims 44 and 52 do not transform an article or physical object to a different state or thing. In other words, "determining" and "weighting" ratings is not a physical transformation. Claims 44 and 52 fails to provide a useful, concrete and tangible result. A "useful" invention must be specific, substantial and credible. The claimed invention is not substantial because it cannot be implemented without further research. As noted supra, elements of the claimed invention are subjective and no standard has been provided. Also, the claimed invention provides no appreciation for numbers, values or a formula for use. See MPEP § 2107.01. The claimed invention is not "concrete" because is not predictable and repeatable. The claimed invention is subject to undue experimentation because the invention is arbitrary (e.g., no formula identifying how the ratings will be weighted); subject to the discretion of its human operators; and elements of the claimed invention are subjective and no standard has been provided (e.g., quality

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of customer service and financial strength). See MPEP §2164.01(a). The claimed invention is not “tangible”, see abstract discussion supra.

A claimed invention is directed to a practical application of a 35 U.S.C. 101 judicial exception when it:

- (A) “transforms” an article or physical object to a different state or thing; or
- (B) otherwise produces a useful, concrete and tangible result, based on the factors discussed below. See MPEP § 2106

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 44-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Libman, US Pat. No. 5,987,434 in view of

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“Rate of Return on Differential Premiums for Selected Participating Life Insurance Contracts” by Phyllis Schiller Myers and S. Travis Pritchett. The Journal of Risk and Insurance, Vol. 50, No. 4. (Dec., 1983), pp. 569-586). (hereinafter Myers);

“The Rate of Return on Universal Life Insurance” by Antony C. Cherin and Robert C. Hutchins. The Journal of Risk and Insurance, Vol. 54, No. 4. (Dec., 1987), pp. 691-711. (hereinafter Cherin);

“Life Insurance Management Issues” by Stephen W. Forbes. The Journal of Risk and Insurance, Vol. 54, Nol. 3. (Sep. 1987), pp. 603-613. (hereinafter Forbes);

“Determinants of Universal Life Insurance Cash Values” by James M. Carson. The Journal of Risk and Insurance, Vol. 63, No. 4, Symposium on Catastrophic Risk. (Dec., 1996), pp. 673-681. (hereinafter Carson);

“Effects of Relationship Marketing on Satisfaction, Retention, and Prices in the Life Insurance Industry” by Lawrence A. Crosby and Nancy Stephens. Journal of Marketing Research, Vol. 24, No. 4 (Nov. 1987). (hereinafter Crosby);

“Classifying Financial Distress in the Life Insurance Industry,” by Ran BarNiv and Robert A. Hershbarger. The Journal of Risk and Insurance, Vol. 57, Nol. 1. (Mar., 1990), pp. 110-136). (hereinafter BarNiv).

Re Claims 44-51: Libman discloses a method for appraising value of a life insurance product to a customer, comprising:

determining a first numeric rating; a second numeric rating; a third numeric rating; a fourth numeric rating; a fifth numeric rating; and a sixth numeric rating (Libman, abstract, col. 1, line 1 – col. 4, line 42; col. 5, lines 45+ - col. 14, line 6).

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obtaining a weighted average of the first, second, third, fourth, fifth and sixth numeric ratings based on predetermined weightings to determine an overall rating of value for the life insurance product (Libman, abstract, col. 1, line 1 – col. 4, line 42; col. 5, lines 45+ - col. 14, line 6).

Libman fails to explicitly disclose:

wherein the rating is of the benefits by a life insurance product offered to a customer at a proposed price;

wherein the rating is of the life insurance performance under predetermined assumptions about future interest rates and reduced premium levels;

wherein the rating is of a financial status of an insurance company providing the life insurance product;

wherein the rating is of the historical interest credited rates for the life insurance product;

wherein the rating is of the quality of customer service provided by the insurance company; and

wherein the rating is of the financial strength of the insurance company.

Myers discloses:

wherein the rating is of the benefits by a life insurance product offered to a customer at a proposed price (Myers, pgs. 569-586).

Cherin discloses:

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wherein the rating is of the life insurance performance under predetermined assumptions about future interest rates and reduced premium levels (Cherin, pgs. 691-711).

Forbes discloses:

wherein the rating is of a financial status of an insurance company providing the life insurance product (Forbes, pgs. 603 – 613).

Carson discloses:

wherein the rating is of the historical interest credited rates for the life insurance product (Carson, 673-681).

Crosby discloses:

wherein the rating is of the quality of customer service provided by the insurance company (Crosby, abstract, pg. 404).

BarNiv discloses:

wherein the rating is of the financial strength of the insurance company (BarNiv, pgs. 110-136).

Broadest Reasonable Interpretation: For purposes of claim interpretation the following terms have been given their broadest reasonable interpretation in accordance with MPEP § 2111.

value: a) an amount regarded as a fair equivalent for something or b) the relative, worth, merit or importance of something.

weight: a) authoritative influence or importance

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Libman by adopting the teachings of Myers, Cherin, Forbes, Carson, Crosby and BarNiv to provide a method further comprising:

wherein the rating is of the benefits by a life insurance product offered to a customer at a proposed price;

wherein the rating is of the life insurance performance under predetermined assumptions about future interest rates and reduced premium levels;

wherein the rating is of a financial status of an insurance company providing the life insurance product;

wherein the rating is of the historical interest credited rates for the life insurance product;

wherein the rating is of the quality of customer service provided by the insurance company; and

wherein the rating is of the financial strength of the insurance company.

As suggested by Libman, one would have been motivated to improve the volume of transactions and sales by determining the 'best policy' providers and products for clients as determined by those providers and products that meet a specified set of criteria.

Re Claims 52-59: Libman discloses a method for appraising value of a life insurance product to a customer, comprising;

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determining a plurality of ratings (Libman, abstract, col. 1, line 1 – col. 4, line 42; col. 5, lines 45+ - col. 14, line 6);

obtaining a weighted average of the ratings based on predetermined weightings to determine an overall rating of value of the life insurance product (Libman, abstract, col. 1, line 1 – col. 4, line 42; col. 5, lines 45+ - col. 14, line 6).

Libman fails to explicitly disclose:

a product value for money rating of a life insurance product;
a product stress tolerance rating of the life insurance product;
a management performance rating of a company offering the life insurance product;
a historical interest credited rates rating of the life insurance product;
a customer service quality rating of the company offering the life insurance product; and
a financial strength rating of the company offering the life insurance product.

Myers discloses:

a product value for money rating of a life insurance product (Myers, pgs. 569-586).

Cherin discloses:

a product stress tolerance rating of the life insurance product (Cherin, pgs. 691-711).

Forbes discloses:

a management performance rating of a company offering the life insurance product (Forbes, pgs. 603 – 613).

Carson discloses:

a historical interest credited rates rating of the life insurance product (Carson, 673-681).

Crosby discloses:

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a customer service quality rating of the company offering the life insurance product (Crosby, abstract, pg. 404).

BarNiiv discloses:

a financial strength rating of the company offering the life insurance product (BarNiv, pgs. 110-136).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Libman by adopting the teachings of Myers, Cherin, Forbes, Carson, Crosby and BarNiv to provide a method further comprising:

a product value for money rating of a life insurance product;

a product stress tolerance rating of the life insurance product;

a management performance rating of a company offering the life insurance product;

a historical interest credited rates rating of the life insurance product;

a customer service quality rating of the company offering the life insurance product; and

a financial strength rating of the company offering the life insurance product.

Broadest Reasonable Interpretation: For purposes of claim interpretation the following terms have been given their broadest reasonable interpretation in accordance with MPEP § 2111.

value: a) an amount regarded as a fair equivalent for something or b) the relative, worth, merit or importance of something.

weight: a) authoritative influence or importance

As suggested by Libman, one would have been motivated to improve the volume of transactions and sales by determining the 'best policy' providers and products for clients as determined by those providers and products that meet a specified set of criteria.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

Oath/Declaration

Proper correction has not been received.

101

As noted supra, claims 44 and 52 are cover a 35 U.S.C. 101 Judicial Exception because they are directed to abstract ideas. Furthermore, claims 44 and 52 are not directed to a practical application of a judicial exception.

103

It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Libman is in the same field of endeavor.

Libman teaches an automated method and apparatus that enables the selection of the most appropriate financial products. The term financial products as used in Libman includes insurance policies such as life insurance products.

Financial products as the term is used in this document refers to insurance products such as individual life insurance of all types, tax deferred annuities of all

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types, health insurance of all types, and the like. Financial products, however, also may include other forms of financial instruments. (Libman, col. 5, lines 52-57)

Libman suggests that a variety of methodologies may be used in evaluating the financial products (.e.g., life insurance product).

In addition, the Virtual Agent module has great flexibility in the specific analytical and decision making methods and procedures used. Specific yet merely illustrative examples are provided below. (Libman, col. 9, lines 66+-col. 10, line 2)

The factors/decision criteria described in Libman are like the ratings described in the claimed invention. In both cases, the factors/decision criteria and the ratings are considered to be important and each represent a component having an influence on the ultimate value afforded the financial product (.e.g., life insurance product). As discussed supra, the term value has multiple meanings including a) an amount regarded as a fair equivalent for something or b) the relative, worth, merit or importance of something. Regardless, of which meaning is used, Libman suggests the relevance placing a value on the financial product (.e.g., life insurance product). For example, the relative value of a particular financial product (.e.g., life insurance product) to client(s) in comparison to other financial products(.e.g., life insurance products) is given. For example, a plurality of financial products (.e.g., life insurance products) are fair equivalents because they meet a specified set of criteria/factors. In that case, the financial product (.e.g., life insurance product) with the best price (e.g., lowest premium) is selected. Libman gives the following illustrative examples.

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The first methodology considers each of the various factors which may be used to evaluate the attractiveness of that product for the particular client. Such factors may include the premiums, issue constraints, compensation paid to the system user, product provider, etc., and underwriting requirement. (Libman, col. 12, lines 42-48)

The "best policy" methodology evaluates and analyzes a potentially large number of product providers and products which best meet a specified set of criteria, for example, by picking the product having the lowest premium for the client. (Libman, col. 12, lines 49-53).

Myers, Cherin, Forbes, Carson, Crosby and BarNiiv are also within the same field of endeavor as the claimed invention and relate to insurance products. Each reference demonstrates how the specific factors/decision criteria (i.e., ratings) were used in the analysis and valuation of insurance products. See citations supra.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Libman suggests, one would have been motivated to improve the volume of transactions and sales by determining the 'best policy' providers and products for clients as determined by those providers and products that meet a specified set of criteria.

In response to applicants arguments that the prior art teaches away and that the references each teach their own separate ratings. As noted supra, Libman teaches the

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use of factors/decision criteria (i.e., ratings) in deciding the best financial product (e.g., life insurance product). In light of the Libman teachings, any of a plurality of factors/decision criteria (i.e., ratings) could be used in accordance with one's particular design preferences. Myers, Cherin, Forbes, Carson, Crosby and BarNiiv demonstrate how it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the specified ratings because each were used in the analysis and valuation of insurance products.

Reference disclosure must be evaluated for all that it fairly suggests and not only for what is indicated as preferred. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). "

The test for obviousness under U.S.C. 103 is not the express suggestion of the claimed invention in any or all of the references but what the references taken collectively would suggest. *In re Conrad*, 169 USPQ 170 (CCPA 1971).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 208 USPQ 871 (CCPA 1981).

Claims 44-59 recite combinations which only unites old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Chandler whose telephone number is 571-272-1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC

/JAGDISH N PATEL/

Primary Examiner, Art Unit 3693